



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.6401 OF 2023

The State of Mah., through Secretary, Public Works Department, Mantralaya,
Mumbai and others .Vs. Gulam Mohd. Gulam Rasul Quareshi

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri N.R. Patil, A.G.P. for petitioners/State.

Shri D.C.R. Mishra, Advocate for respondent.

CORAM : ANIL L. PANSARE, J.

DATED : 27/11/2024

1. Having heard at length, the petition could be disposed of on the basis of the judgment relied upon by the learned Assistant Government Pleader for the petitioners. He has invited my attention to the judgment passed by the Co-ordinate Bench of this Court in the case of *Arvind G. Chaudhari and another .Vs. Dhanraj Nathu Patil and another*, reported in 2008 (6) Mh.L.J. 746. The respondent No.1 therein was appointed as "Mustering Assistant". He was continued in service for the period from 1979 to 1984 and was given a break. Thereafter, the services of the respondent No.1 therein were again continued from 1985. Again he was given a break in 1986. He received wages at Rs.3,00/- per month. Thus, the appointment was on monthly basis. His services were then not required and was accordingly relieved from service. He challenged the termination in terms of provisions of the Industrial Disputes

Act, 1947. The argument before the Co-ordinate Bench was that the appointment of respondent No.1 was under the Employment Guarantee Scheme (EGS) and is governed by the provisions of Maharashtra Employment Guarantee Act, 1977 and the Rules and Scheme framed thereunder and that the persons working under the said scheme are not governed by the provisions of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as “MRTU and PULP Act”) or the Industrial Disputes Act, 1947, because the Employment Guarantee Scheme run by the Government is not an Industry. The Co-ordinate Bench considered various judgments and held thus;

“10. Thus this Court has taken a view that the persons working under the Employment Guarantee Scheme are not governed by the provisions of the M.R.T.U. and P.U.L.P. Act and the I.D. Act. The Employment Guarantee Scheme is not an industry and as such the Labour Court and the Industrial Court will not have jurisdiction to give reliefs which the Labour Court has given in this matter to present respondent No. 1.”

2. As could be seen, the Co-ordinate Bench has categorically held that an Employment Guarantee Scheme is not an industry and therefore, the Labour Court and the Industrial Court will not have jurisdiction to give reliefs.

3. Unfortunately, this point was not raised before the Industrial Court and therefore, the Industrial Court has not applied his mind on this point. Nonetheless, this being

a law point could be entertained in any proceedings, including in writ petition.

4. Further, the Division Bench in the case of ***Pundalik Ramchandra Tuppad .Vs. The State of Maharashtra*** in W.P. No.5088 of 1997 decided on 07.08.2006, has taken a similar view. In the said case also the petitioner therein was appointed as Mustering Assistant under the Employment Guarantee Scheme and worked in the office of the Sub-Divisional Office, Akola for the period from 01.06.1979 till 23.06.1997. The petitioner was absorbed in Class-IV post in terms of the Employment Guarantee Scheme. The said order was challenged, as according to him, he ought to have been appointed in Class-III post. The Division Bench by relying upon the judgment of the Supreme Court in the case of ***Delhi Development Horticulture Employee' Union v. Delhi Administration, Delhi & Ors.***, reported in AIR 1992 SC 789 observed that many writ petitions were filed in the High Court, either arising out of the orders passed by the Industrial Court or Labour Court and the High Court dealing with such matters held that the persons working under the Employment Guarantee Scheme cannot be directed to be regularised under the Industrial legislation.

5. The counsel for the respondent has referred the judgment of the Supreme Court in the case of ***State of State of Rajasthan Vs. Ganeshi Lal***, reported in AIR 2008 SC 690

wherein, the Court while explaining law on precedent has observed that decision is precedent on its own facts, but what is binding in a decision is the principle on which it is decided. The Court further held that the reliance on a decision without looking into the factual background of case before it is clearly impermissible.

6. This principle of law is well settled. So far as the facts of the present case are concerned, there is no dispute that the respondent herein was appointed as Mustering Assistant. In fact, he has placed before the Industrial Court his appointment order, which reads thus;

Doc. No.1

Office order No.3/EC/80

Office of the
Sub Divisional Officer
Irrigation Sub Division
Tumsar

OFFICE ORDER

Shri. Gulam Md. Gulam Rasul Qureshi is hereby appointed provisionally for E.G.S. work of Bagheda canal with H.R. of Mitewani subject to the approved by the E.E.B.I. Dn. Gondia as "Mustering Assistant" on work charged establishment in fixed pay Rs.150/- wef 21.1.80 to 31.3.80 or till the work in continued which over is earlier.

The appointment is purely temporary on work charged establishment only for E.G.S. work and liable to the terminated without any notice and assigning any reasons.

No joining expenses will be allowed.

Sd/-
Sub Divisional Officer
Irrigation Sub Division
Tumsar

Endt No.176/E.C.

Date 1/1/80

7. The aforesaid order clearly spells out that the respondent was appointed under Employment Guarantee Scheme as Mustering Assistant and his appointment was purely temporary on work charged establishment only for Employment Guarantee Scheme work. In my view, the law laid down by the Co-ordinate Bench as also the Division bench is squarely applicable to the facts of the present case, and therefore, the Industrial Court had no jurisdiction to entertain the petition.

8. The order impugned dated 21.09.2022 passed by the learned Industrial Court is therefore unsustainable and is accordingly quashed and set aside. The respondent is however, at liberty to approach the appropriate forum / authority as permissible under the Employment Guarantee Scheme or the provisions of Maharashtra Employment Guarantee Act, 1977.

9. Writ petition is **disposed of** in above terms. No order as to costs.

(ANIL L. PANSARE, J.)